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20 **UNITED STATES DISTRICT COURT**  
21 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

22 NATURAL RESOURCES DEFENSE COUNCIL,  
23 INC.; SIERRA CLUB; CONSUMER FEDERATION  
24 OF AMERICA; and TEXAS RATEPAYERS'  
25 ORGANIZATION TO SAVE ENERGY,

26 Plaintiffs,

27 v.

28 DAN R. BROUILLETTE, in his official capacity as  
Secretary of the United States Department of  
Energy; and the UNITED STATES DEPARTMENT  
OF ENERGY,

Defendants,

and

**Lead Case**

Case No. 17-cv-03404-VC

**Plaintiffs' Notice of Motion and  
Motion for Attorneys' Fees and  
Costs**

Date: June 25, 2020

Time: 10 a.m.

Judge: Hon. Vince Chhabria

Courtroom: 4, 17th Floor

AIR-CONDITIONING, HEATING, AND  
REFRIGERATION INSTITUTE,

Defendant-Intervenor.

The People of the STATE OF CALIFORNIA, by and  
through Attorney General XAVIER BECERRA, THE  
CALIFORNIA ENERGY COMMISSION, STATE OF  
NEW YORK, STATE OF CONNECTICUT, STATE  
OF ILLINOIS, STATE OF MAINE, STATE OF  
MARYLAND, COMMONWEALTH OF  
MASSACHUSETTS, STATE OF MINNESOTA, by  
and through its MINNESOTA DEPARTMENT OF  
COMMERCE and MINNESOTA POLLUTION  
CONTROL AGENCY, STATE OF OREGON,  
COMMONWEALTH OF PENNSYLVANIA, STATE  
OF VERMONT, STATE OF WASHINGTON, THE  
DISTRICT OF COLUMBIA, and CITY OF NEW  
YORK,

Plaintiffs,

v.

DAN R. BROUILLETTE, as Secretary of the United  
States Department of Energy, and THE UNITED  
STATES DEPARTMENT OF ENERGY,

Defendants,

and

AIR-CONDITIONING, HEATING, AND  
REFRIGERATION INSTITUTE,

Defendant-Intervenor.

*Consolidated with*

Case No. 17-cv-03406-VC

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE THAT on June 25, at 10 a.m., before the Honorable Vince  
3 Chhabria, Courtroom 4, 17th Floor, 450 Golden Gate Avenue, San Francisco, California,  
4 94102, Plaintiffs Natural Resources Defense Council, Sierra Club, Consumer Federation of  
5 America, and Texas Ratepayers' Organization to Save Energy (collectively, Plaintiffs) will  
6 and hereby do move for an award of attorneys' fees and costs in this matter pursuant to  
7 the Energy Policy and Conservation Act, 42 U.S.C. § 6305(d).

8 Plaintiffs respectfully move for an order awarding attorneys' fees in the sum of  
9 \$681,651, which includes \$42,292 in "fees-on-fees," plus expenses totaling \$4,200.66, for a  
10 combined award of \$685,851.66. Plaintiffs' motion relies upon an accompanying  
11 Memorandum of Points and Authorities, the concurrently filed declarations of Aaron  
12 Colangelo, Michael Rubin, Christopher Sproul, Richard T. Drury, and Daniel Cooper, and  
13 the pleadings and other papers on file in this case and in the U.S. Court of Appeals for the  
14 Ninth Circuit dockets for the appeals from this case, 9th Cir. Nos. 18-15380 and 18-15475.

15 Plaintiffs' counsel made a good faith effort to confer with counsel for Defendants in  
16 an attempt to resolve Plaintiffs' claim for attorneys' fees but were unable to resolve the  
17 matter.

18 Plaintiffs' counsel have consulted Northern District of California General Orders 72-  
19 2 and 73, and are available for a telephonic or video-conference hearing if the Court is  
20 inclined to hear oral arguments on this motion.

21  
22 Dated: May 15, 2020

Respectfully submitted,

23 /s/ Daniel Hessel

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*Texas Ratepayers' Organization to Save Energy*

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## INTRODUCTION

Plaintiffs Natural Resources Defense Council (NRDC), Sierra Club, Consumer Federation of America, and Texas Ratepayers' Organization to Save Energy (collectively, Plaintiffs) seek an award of reasonable attorneys' fees and costs after successfully challenging the Department of Energy's (DOE's) failure to submit four energy-conservation standards for publication in the Federal Register, in violation of its own regulations. Plaintiffs prevailed in this Court, which denied DOE's motion to dismiss, granted summary judgment to Plaintiffs, and ordered DOE to submit the rules for publication. The Ninth Circuit affirmed that decision. After nearly three years of unwarranted delay, DOE submitted the rules for publication, and they took effect two months ago. *See* 85 Fed. Reg. 1378 (Jan. 10, 2020); 85 Fed. Reg. 1447 (Jan. 10, 2020); 85 Fed. Reg. 1504 (Jan. 10, 2020); 85 Fed. Reg. 1592 (Jan. 10, 2020). The standards will reduce carbon dioxide emissions by an estimated 99 million metric tons and save consumers and businesses an estimated \$8.4 billion over a 30-year period. *See* Order Den. Defs.' Mots. to Dismiss and Granting Pls.' Mots. for Summ. J. (Order), ECF No. 81, at 2 (citing DOE conclusions).

Having prevailed in this case and achieved meaningful results of national importance, Plaintiffs respectfully move the Court for an award of reasonable attorneys' fees and costs, pursuant to the fee-shifting provision of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. § 6305(d). Plaintiffs' requested fee award is warranted because they prevailed on the merits, vindicating EPCA, and because no special circumstances would render the award unjust. Plaintiffs seek recovery of \$685,851.66. This figure reflects a reasonable amount of time expended to litigate this hard-fought case, at hourly rates consistent with the San Francisco legal market, plus modest costs, as detailed below. Plaintiffs' request should be awarded in full.

## PROCEDURAL HISTORY

Plaintiffs filed this lawsuit to challenge DOE's failure to submit four important energy-conservation standards for publication in the Federal Register. ECF Nos. 1, 43.

DOE had violated its own “Error Correction Rule,” 10 C.F.R. § 430.5 (2019), which compels it to publish such standards after a period of limited review. ECF No. 1 ¶¶ 88-89; ECF No. 43 ¶¶ 116-17. An industry group, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), intervened to defend DOE’s inaction, and Plaintiffs’ case was consolidated with a similar lawsuit filed by a coalition of states, state agencies, and cities. ECF No. 40. Defendants and Defendant-Intervenor moved to dismiss Plaintiffs’ claims, raising a slew of defenses. ECF Nos. 46, 48. Plaintiffs opposed those motions and sought summary judgment, ECF No. 65, as did the separate government plaintiffs, ECF No. 67.

On February 15, 2018, this Court denied the motions to dismiss and granted the motions for summary judgment. ECF Nos. 81, 82. The Court held that the Error Correction Rule established a non-discretionary duty to submit final energy-conservation standards for publication in the Federal Register and ordered DOE to do so. Order at 8-9. Defendants and Defendant-Intervenor both appealed, ECF Nos. 85, 92, and both asked the Court to stay its Order pending appeal, ECF Nos. 86, 87, 93. The Court twice declined to grant a stay. ECF Nos. 90, 98. On Defendants’ and Defendant-Intervenor’s motions and over Plaintiffs’ opposition, the Ninth Circuit stayed the Order pending its review. Order, No. 18-15380 (9th Cir. Apr. 11, 2018), Dkt. No. 42; Order, No. 18-15475 (9th Cir. Apr. 11, 2018), Dkt. No. 38.

After full briefing and argument, the Ninth Circuit affirmed this Court’s February 15, 2018 Order in full, holding that the Court had jurisdiction to hear the case and that DOE had violated its Error Correction Rule. *See* ECF No. 106. As a result, DOE finally submitted the energy-conservation standards for publication in the Federal Register, and they took effect on March 20, 2020. *See* 85 Fed. Reg. at 1378; 85 Fed. Reg. at 1447; 85 Fed. Reg. at 1504; 85 Fed. Reg. at 1593. The Ninth Circuit granted Plaintiffs’ unopposed request to transfer to this Court consideration of fees incurred on appeal. ECF No. 108. This Court entered several joint stipulations extending the deadline to seek fees to permit the parties to attempt a settlement. ECF Nos. 84, 103, 110, 113. The parties were unable to reach a settlement, and Plaintiffs now move for fees within the stipulated timeframe, ECF No. 113.

## ARGUMENT

### I. Plaintiffs are entitled to fees under EPCA

EPCA provides that a court “may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.” 42 U.S.C. § 6305(d). Plaintiffs are entitled to a fee award because (1) they are prevailing parties, *see Pennsylvania v. Del. Valley Citizens’ Council for Clean Air*, 483 U.S. 711, 715 (1987), and (2) a fee award is “appropriate,” 42 U.S.C. § 6305(d).

#### A. Plaintiffs prevailed

Plaintiffs meet both “criteria to qualify as a prevailing party.” *Carbonell v. INS*, 429 F.3d 894, 898 (9th Cir. 2005). They “achieve[d] a ‘material alteration of the legal relationship of the parties,’” and “that alteration . . . [was] ‘judicially sanctioned.’” *Id.* (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604-05 (2001)). Plaintiffs asked this Court to declare that DOE violated the law and order it to submit the energy-conservation standards for publication. *See* ECF No. 43 at 34. The Court did both of those things, and the Ninth Circuit affirmed that decision. As a result, the energy-conservation standards have taken effect, *see, e.g.*, 85 Fed. Reg. at 1593, to the benefit of Plaintiffs and their members, *see, e.g.*, Guerrero Decl., ECF No. 65-3; Vigliotti Decl., ECF No. 65-4; Biedrzycki Decl., ECF No. 65-7. This Court’s Order – as affirmed by the Ninth Circuit – materially altered the legal relationship between Plaintiffs and DOE, making Plaintiffs prevailing parties.

Plaintiffs also prevailed “in a manner which Congress sought to promote in [EPCA].” *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989). Their victory helped “achieve[] . . . statutory goals.” *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 706 (1983) (citation omitted). Congress passed EPCA in part to “conserve energy supplies through energy conservation programs” and improve energy efficiency of major appliances and consumer goods. Pub. L. No. 94-163, § 2(4)-(5), 89 Stat. 871, 874 (1975) (codified as amended at 42 U.S.C. § 6201(4)-(5)). The statute, as amended, requires DOE to establish cost-effective, technologically feasible conservation standards for consumer and

commercial products to achieve “maximum improvement in energy efficiency.” 42 U.S.C. § 6295(o)(2)(A); *see also id.* §§ 6313(a)(6)(A), 6316(a). Plaintiffs’ victory furthers those goals: the now-promulgated standards promote energy efficiency, saving billions of dollars and reducing carbon dioxide emissions over 30 years. Order at 2 (citing DOE conclusions).

**B. A fee award is appropriate**

A fee award is appropriate here because no “special circumstances would render such an award unjust.” *Saint John’s Organic Farm v. Gem Cty. Mosquito Abatement Dist.*, 574 F.3d 1054, 1062 (9th Cir. 2009) (emphasis and citation omitted) (interpreting analogous language in the Clean Water Act); *see also Indep. Fed’n of Flight Attendants v. Zipes*, 491 U.S. 754, 758 n.2 (1989) (“[F]ee-shifting statutes’ similar language is ‘a strong indication’ that they are to be interpreted alike.” (citation omitted)).

The Ninth Circuit has “interpreted the ‘special circumstances’ standard . . . quite strictly,” with fee awards “‘the rule rather than the exception.’” *Saint John’s*, 574 F.3d at 1062 (quoting *Ackerley Commc’ns, Inc. v. City of Salem*, 752 F.2d 1394, 1396 (9th Cir. 1985)). “Under this standard, ‘the [C]ourt’s discretion to deny a fee award to a prevailing plaintiff is narrow,’ and a denial of fees on the basis of ‘special circumstances’ is ‘extremely rare.’” *Id.* at 1063-64 (citations omitted). No such special circumstances are present here, particularly because DOE’s good-faith belief that it adhered to the law does not qualify as a special circumstance. *Teitelbaum v. Sorenson*, 648 F.2d 1248, 1250-51 (9th Cir. 1981); *see also Resurrection Bay Conservation All. v. City of Seward*, 640 F.3d 1087, 1092-93 (9th Cir. 2011) (discussing examples of special circumstances warranting fee award denial, none of which applies here).

\* \* \*

In light of their victory in this case, which furthered EPCA’s purposes, and in the absence of any special circumstances, Plaintiffs are entitled to recover fees.

**II. Plaintiffs’ requested fees are reasonable**

Plaintiffs are entitled to recover reasonable attorneys’ fees for their efforts. To determine what is reasonable, the Court should examine the “lodestar,” calculated by

1 multiplying the number of hours Plaintiffs' counsel reasonably spent on this litigation by  
 2 reasonable hourly rates. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Moreno v. City of*  
 3 *Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Using this method, Plaintiffs are entitled to  
 4 \$685,851.66, which includes \$4,200.66 in expenses and \$42,292 in "fees-on-fees" to date.

5 **A. Plaintiffs seek recovery for a reasonable number of hours**

6 Plaintiffs are entitled to recover "time [that] could reasonably have been billed to a  
 7 private client." *Moreno*, 534 F.3d at 1111. In evaluating the hours billed, "trial courts need  
 8 not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826,  
 9 838 (2011). The goal of fee shifting "is to do rough justice, not to achieve auditing  
 10 perfection." *Id.*

11 Plaintiffs seek fees for the work of five attorneys—four of whom worked on the  
 12 merits of the case and one of whom joined to litigate fees—as well as paralegal time. They  
 13 seek recovery for 923.5 hours of attorney and paralegal time for the merits litigation, as  
 14 detailed in their lodestar calculations, *infra* Part II.B. This is a reasonable amount of time to  
 15 litigate a heavily contested case against well-represented adversaries in this Court and in  
 16 the Ninth Circuit.

17 Plaintiffs' counsel kept contemporaneous billing records that reflect each lawyer's  
 18 work. Colangelo Decl., Ex. 2 (attaching merits timesheets). They conducted a line-by-line  
 19 review of their timesheets and made "a good faith effort to exclude from [their] fee request  
 20 hours that are excessive, redundant, or otherwise unnecessary." *Hensley*, 461 U.S. at 434.  
 21 As part of this process, Plaintiffs' counsel cut all travel time, totaling 49.2 total hours,  
 22 which, if billed at half the hourly market rates Plaintiffs seek, would have a value of  
 23 \$19,777.50. Colangelo Decl. ¶ 31(a). They cut 34.6 hours spent opposing Defendant-  
 24 Intervenor's motion to intervene, which, if billed at market rates, would have a value of  
 25 \$25,880.50. *Id.* ¶ 31(b). Plaintiffs also capped time spent preparing for oral argument before  
 26 the Ninth Circuit at 80 hours, removing 47.2 hours actually expended, which, if billed at  
 27 market rates, would have a value of \$29,500. *Id.* ¶ 31(c). These cuts alone amount to a  
 28 nearly 12 percent reduction in Plaintiffs' merits fees. *Id.* ¶ 31(d).

1 Plaintiffs also seek fee recovery only for the core group of lawyers who worked on  
 2 the merits of the case and on this fee motion, even though other lawyers played important  
 3 roles and contributed to the case at each stage. In limiting this fee request to the principal  
 4 attorneys on the case, Plaintiffs cut all time spent by the following additional lawyers:

- 5 • Katherine Kennedy, a Senior Director of NRDC's Climate and Clean Energy Program  
 6 and a nationally recognized environmental lawyer who has litigated precedent-setting  
 7 cases in energy policy, and who was involved in developing litigation strategy and  
 8 advising on major court filings in this case;
- 9 • Benjamin Longstreth, a senior attorney and Deputy Director of the Federal Policy  
 10 Group in NRDC's Climate and Clean Energy Program, who advised on case strategy at  
 11 the outset of the case and reviewed the initial pleadings;
- 12 • Daniel Carpenter-Gold, a former NRDC litigation fellow, who conducted legal research  
 13 and reviewed and edited the merits brief on appeal;
- 14 • Gregory Loarie, a staff attorney at Earthjustice in San Francisco, who served as local  
 15 counsel and reviewed court filings for substance and for compliance with all relevant  
 16 local rules; and
- 17 • several other NRDC lawyers who joined moot courts to help prepare arguing counsel  
 18 for their oral arguments and who cite-checked each of Plaintiffs' significant filings.

19 *Id.* ¶ 30(a)-(e).

20 Plaintiffs also cut all time recorded by legal interns who conducted research for this  
 21 case. *Id.* ¶ 30(f). Finally, Plaintiffs do not seek compensation for the work of NRDC's in-  
 22 house expert, Lauren Urbanek – who drafted and filed two declarations and advised  
 23 Plaintiffs' counsel on technical aspects of the case and the conservation standards at issue.  
 24 *Id.* ¶ 32.

25 All of this time is compensable but, in an exercise of discretion, Plaintiffs have  
 26 chosen to cut it to eliminate any possible redundancies and to be conservative in their fee  
 27 request.

28 Given the work involved, the results achieved, the careful review of billing records,



1 and the exclusion of many hours of compensable time as described above, Plaintiffs'  
 2 request to be compensated for 923.5 total hours is reasonable. The Court should "defer to  
 3 the winning lawyer[s'] professional judgment as to how much time [they were] required to  
 4 spend on the case," especially where, as here, Plaintiffs' counsel litigated the case pro  
 5 bono, giving them no incentive "to spend unnecessary time . . . in the hope of inflating  
 6 their fees." *Moreno*, 534 F.3d at 1112.

7 Plaintiffs acknowledge that, while they successfully opposed two stay motions  
 8 before this Court, the Ninth Circuit stayed the Court's Order over their opposition. Order,  
 9 No. 18-15380 (9th Cir. Apr. 11, 2018), Dkt. No. 42; Order, No. 18-15475 (9th Cir. Apr. 11,  
 10 2018), Dkt. No. 38. Plaintiffs are still entitled to recover fees for efforts to oppose a stay.  
 11 "[A] plaintiff who is unsuccessful at a stage of litigation that was a necessary step to her  
 12 ultimate victory is entitled to attorney's fees even for the unsuccessful stage." *Cabrales v.*  
 13 *Cty. of Los Angeles*, 935 F.2d 1050, 1053 (9th Cir. 1991). This includes opposing a stay,  
 14 especially where, as here, the opposition discussed the merits on which Plaintiffs  
 15 ultimately prevailed. *See Air Transp. Ass'n of Canada v. FAA*, 156 F.3d 1329, 1335 (D.C. Cir.  
 16 1998) (awarding fees for unsuccessfully seeking stay pending successful petition for  
 17 review because "preparing arguments on the 'likelihood of success,' contributed to the  
 18 ultimate result"); *see also* Opp'n to Defs.' Emergency Mot. for Stay Pending Appeal at 15-  
 19 26, No. 18-15380 (9th Cir. Mar. 30, 2018), Dkt. No. 21 (arguing Defendants were unlikely to  
 20 succeed).

21 A small part of Plaintiffs' work on this case responded directly to AHRI and not  
 22 DOE. That time is compensable, too, "[b]ecause [Plaintiffs'] attorneys' fees for the [AHRI]-  
 23 related work were incurred in opposing improper government resistance to their rightful  
 24 demands." *Pollinator Stewardship Council v. EPA*, No. 13-72346, 2017 WL 3096105, at \*10  
 25 (9th Cir. June 27, 2017). However, as mentioned above, Plaintiffs have excluded 34.6 hours  
 26 spent opposing AHRI's intervention, Colangelo Decl. ¶ 31(b), although that time is likely  
 27 compensable, *Pollinator*, 2017 WL 3096105, at \*8-\*10 (holding EPA must compensate time  
 28 spent indicating that plaintiff took no position on industry intervention to defend agency

1 decision).

2 The resulting total request—923.5 hours—is reasonable. This case required  
 3 substantial briefing and oral arguments before this Court and on appeal. The briefing and  
 4 arguments involved several jurisdictional issues regarding discretionary versus non-  
 5 discretionary agency action, nuanced questions of regulatory interpretation, and complex  
 6 matters of administrative law, litigated by two sets of sophisticated defendants. Plaintiffs  
 7 also had to prepare detailed factual submissions to prove their standing and oppose  
 8 multiple requests for a stay pending appeal, two of which were filed on an emergency  
 9 basis. This was a hard-fought case, involving matters of national consequence.

10 Finally, Plaintiffs litigated the case efficiently. After reductions, Plaintiffs’ lead  
 11 counsel, Jennifer Sorenson, billed fewer than 460 hours developing and litigating this case  
 12 from February 2017 to June 2018. Ian Fein, who handled much of the appellate briefing  
 13 and argued before the Ninth Circuit, billed just over 160 hours on those efforts, after  
 14 reductions. Aaron Colangelo, who supervised all work on this case, spent fewer than 130  
 15 hours for the entire merits portion of the case, and Timothy Ballo, lead counsel for three of  
 16 the Plaintiffs, spent approximately 150 hours. *See* Colangelo Decl., Ex. 1. In light of the  
 17 complexity of this case, a total of 923.5 hours indicates efficiency.

18 **B. Plaintiffs’ requested rates are consistent with the San Francisco market**

19 Plaintiffs are entitled to recover fees at the “rate prevailing in the community for  
 20 similar work performed by attorneys of comparable skill, experience, and reputation.”  
 21 *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir. 1997) (citation omitted). Market rates apply  
 22 “regardless of whether [a] plaintiff is represented by private or nonprofit counsel.” *Blum v.*  
 23 *Stenson*, 465 U.S. 886, 895 (1984). The relevant legal community for this case is San  
 24 Francisco, where this Court sits. *See Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979  
 25 (9th Cir. 2008).

26 Below, Plaintiffs describe briefly the background and role of each lawyer for whom  
 27 they seek fee recovery. *See also* Colangelo Decl., Exs. 6-10 (attorneys’ resumes).

- 28 • Jennifer Sorenson served as principal counsel for NRDC in this case. Ms. Sorenson



1 graduated from Yale Law School in 2009, where she was a member of the *Yale Law*  
 2 *Journal* and a Coker Teaching Fellow in Constitutional Law. She clerked for Judge  
 3 Marsha Berzon on the Ninth Circuit before joining NRDC in 2010. She was a Senior  
 4 Attorney at NRDC while litigating this case. Plaintiffs seek fees for Ms. Sorenson at  
 5 hourly rates of \$650 and \$700 for work conducted in 2017 and 2018, respectively.

- 6 • Ian Fein participated in the case at the Ninth Circuit and argued the appeal. Mr. Fein  
 7 graduated in 2011 from University of California, Berkeley, School of Law, where he  
 8 was editor-in-chief of the *California Law Review*. He clerked for Judge William Fletcher  
 9 of the Ninth Circuit, Judge Judith Rogers of the D.C. Circuit, and Supreme Court  
 10 Justice Elena Kagan. Mr. Fein worked in private practice at Orrick, Herrington, &  
 11 Sutcliffe LLP and at a small San Francisco-based law firm before joining NRDC, where  
 12 he is now a Senior Attorney. Plaintiffs seek fees for Mr. Fein at hourly rates of \$625 and  
 13 \$650 for work conducted in 2018 and 2019, respectively.
- 14 • Aaron Colangelo supervised the litigation for NRDC, engaging in litigation strategy  
 15 discussions, reviewing and editing all filings, and researching and drafting some of the  
 16 court papers. Mr. Colangelo graduated cum laude from Harvard Law School in 1999,  
 17 where he was an editor on the *Harvard Law Review*, and he worked as a litigation  
 18 associate at Covington & Burling LLP from 1999 to 2001. He has litigated  
 19 environmental matters at NRDC since 2001 and served as one of NRDC's co-litigation  
 20 directors from 2015 until early 2020. He is now NRDC's Chief Litigating Counsel.  
 21 Plaintiffs seek fees for Mr. Colangelo at hourly rates of \$815 for work conducted in  
 22 2017; \$830 for work in 2018; and \$850 for work in 2019 and 2020.
- 23 • Timothy Ballo of Earthjustice served as lead counsel for plaintiffs Sierra Club, the  
 24 Consumer Federation of America, and the Texas Ratepayers' Organization to Save  
 25 Energy. Mr. Ballo earned a law degree from Washington and Lee University in 2004  
 26 and a master's degree from Columbia University in 2006. While he was at Columbia,  
 27 Mr. Ballo litigated environmental cases part time. He joined Earthjustice as an associate  
 28 attorney in 2007 and is now a staff attorney in the Washington, D.C. office. Plaintiffs

1 seek fees for Mr. Ballo at hourly rates of \$775 for work conducted in 2017; \$785 for  
2 work in 2018; and \$800 for work in 2019.

- 3 • Daniel Hessel, a litigation fellow at NRDC, joined this case to litigate fee recovery. He  
4 graduated from Yale Law School in 2016 and clerked for Judge Christopher R. Cooper  
5 of the U.S. District Court for the District of Columbia. Plaintiffs seek fees for Mr. Hessel  
6 at hourly rates of \$370 and \$410 for work conducted in 2019 and 2020, respectively.
- 7 • Plaintiffs also seek recovery for paralegal time at an hourly rate of \$200.

8 Plaintiffs seek fees that are consistent with San Francisco market rates for lawyers of  
9 comparable skill, experience, and reputation, as demonstrated by declarations from  
10 practitioners from small and large firms who are familiar with the San Francisco market  
11 and the backgrounds and skills of Plaintiffs' counsel. *See* Rubin Decl. ¶ 11; Sproul Decl.  
12 ¶¶ 17-18, 24-30; Drury Decl. ¶¶ 7-14, 25-27; Cooper Decl. ¶¶ 14-26.

13 These rates are comparable to what one prominent San Francisco law firm charges  
14 its commercial clients, Rubin Decl. ¶ 11, and what a boutique environmental law firm bills  
15 its clients, Drury Decl. ¶ 17; *see also* Cooper Decl. ¶ 10 (market rates billed by San Francisco  
16 attorneys practicing environmental and natural resources law range from \$300 to over  
17 \$1,000 per hour). They are less than another firm recovered recently – even at a rate that  
18 was a “significant discount” from what the firm typically charges. *Grouse River Outfitters*  
19 *Ltd. v. Oracle Corp.*, No. 16-CV-02954-LB, 2019 WL 6682842, at \*3 (N.D. Cal. Dec. 6, 2019).  
20 Billing surveys of San Francisco law firms further confirm the reasonableness of Plaintiffs'  
21 requested rates. *See* Drury Decl. ¶¶ 21-23 & Exs. A-B (discussing 2018 *Partner Compensation*  
22 *Survey* and December 2014 *National Law Journal* billing survey).

23 The rates are also commensurate with rates found reasonable for lawyers with  
24 similar experience in several recent attorney-fee decisions in this district. In *Grouse*, for  
25 example, the court awarded between \$787.50 and \$840 per hour for an attorney with 16  
26 years of experience; between \$746 and \$796 per hour for an attorney with 10 years of  
27 experience; between \$713 and \$760 per hour for two attorneys with six to seven years of  
28 experience; between \$510 and \$544 per hour for an attorney with two years of experience;

1 and between \$416 and \$444 per hour for an attorney with one year of experience. *Grouse*,  
 2 2019 WL 6682842, at \*3; Decl. of Sarah M. Ray, No. 3:16-CV-02954-LB (N.D. Cal. Oct. 4,  
 3 2019), ECF No. 388 (attorney backgrounds); Sproul Decl. ¶ 20 & n.3. The *Grouse* court  
 4 noted that “[t]he rates [we]re consistent with the prevailing rates for lawyers in the district  
 5 and the rates that courts have awarded . . . large law firms in complex civil matters.” 2019  
 6 WL 6682842, at \*6.

7 *Grouse* is no outlier. In *Dickey v. Advanced Micro Devices, Inc.*, the court found the  
 8 following rates to be reasonable for work on a class action lawsuit between 2015 and 2019:  
 9 \$1,000 per hour for an attorney with 23 years of experience; \$725 per hour for an attorney  
 10 with 18 years of experience; \$850 and \$725 per hour, respectively, for a managing attorney  
 11 and an attorney, each of whom had 15 years of experience; \$700 per hour for an attorney  
 12 with 11 years of experience; and between \$275 and \$575 per hour for associates and  
 13 summer associates. No. 15-CV-04922-HSG, 2020 WL 870928, at \*8-\*9 (N.D. Cal. Feb. 21,  
 14 2020); Decl. of Rafey S. Balabanian, No. 4:15-CV-04922-HSG (N.D. Cal. Nov. 15, 2019), ECF  
 15 No. 161-1 (rates requested); Sproul Decl. ¶ 19 & n.2 (attorney experience). Similarly, the  
 16 court in *Hefler v. Wells Fargo & Co.* found reasonable “rates rang[ing] from \$650 to \$1,250  
 17 for partners or senior counsel, from \$400 to \$650 for associates, and from \$245 to \$350 for  
 18 paralegals.” No. 16-CV-05479-JST, 2018 WL 6619983, at \*14 (N.D. Cal. Dec. 18, 2018), *aff’d*  
 19 *sub nom. Hefler v. Pekoc*, 802 Fed. App’x 285 (9th Cir. 2020). The declarations Plaintiffs have  
 20 submitted discuss additional cases demonstrating that the rates Plaintiffs seek are within  
 21 the range awarded or approved by courts in this district. *See* Rubin Decl. ¶ 12; Sproul Decl.  
 22 ¶¶ 18-23.

23 The declarations, court decisions, and billing surveys Plaintiffs and their declarants  
 24 submit more than suffice to demonstrate that Plaintiffs’ requested rates are reasonable. *See*,  
 25 *e.g., Camacho*, 523 F.3d at 980.

26 When these annual hourly rates are applied to the time worked by Plaintiffs’  
 27 counsel (as reduced in an exercise of billing judgment), Plaintiffs’ lodestar for merits work  
 28

is as follows:

	Colangelo	Ballo	Sorenson	Fein	Paralegal	All
2017 Hours	37.1	66.2	244.6	-	1.7	349.6
2017 Rate	\$815	\$775	\$650	-	\$200	-
2017 Total	\$30,236.50	\$51,305	\$158,990	-	\$340	\$240,871.50
2018 Hours	91.2	82.9	214.2	155	21	564.3
2018 Rate	\$830	\$785	\$700	\$625	\$200	-
2018 Total	\$75,696	\$65,076.50	\$149,940	\$96,875	\$4,200	\$391,787.50
2019 Hours	0.8	2.0	-	6.8	-	9.6
2019 Rate	\$850	\$800	-	\$650	-	-
2019 Total	\$680	\$1,600	-	\$4,420	-	\$6,700
Lodestar	\$106,612.50	\$117,981.50	\$308,930	\$101,295	\$4,540	\$639,359

### C. Plaintiffs are entitled to “fees-on-fees”

Plaintiffs are entitled to recover for time spent preparing this fee motion. *See, e.g., Easley v. Collection Serv. of Nev.*, 910 F.3d 1286, 1291-92 (9th Cir. 2018). Plaintiffs seek fees for the work of Aaron Colangelo and Daniel Hessel, the two lawyers who primarily handled fee recovery, at the hourly rates noted above, *supra* Part II.B.

Plaintiffs exercised billing judgment to exclude some time spent on this motion. Specifically, Plaintiffs are excluding all time spent by Timothy Ballo and Ian Fein in helping prepare and review this fee motion, as well as all paralegal time devoted to the motion. Colangelo Decl. ¶ 31(h). Plaintiffs are also excluding all time spent reviewing attorneys’ timesheets to avoid redundancies or excess billing, as well as time spent helping to prepare declarations other than Mr. Colangelo’s. *Id.* ¶ 31(f)-(g). Finally, Plaintiffs do not seek to recover for time spent on unsuccessful fee negotiations. *Id.* ¶ 31(e). All of this time is compensable, but Plaintiffs have declined to seek recovery for these hours to ensure that their fee request is conservative.

Plaintiffs seek compensation for 78.4 hours spent on this motion: 53.9 hours by Daniel Hessel and 24.5 hours by Aaron Colangelo. *See* Colangelo Decl., Exs. 3-4 (fees summary and timesheets). 78.4 hours is a reasonable amount of time to expend on a fee recovery motion. *See Pollinator*, 2017 WL 3096105, at \*14 (holding that 84.93 hours is reasonable for a fee application). When the annual hourly rates identified in Part II.B are

applied to the time worked by Plaintiffs' counsel (as reduced in an exercise of billing judgment), Plaintiffs' lodestar for fees work is as follows:

	Colangelo	Hessel	All
2019 Hours	3.2	15.8	19
2019 Rate	\$850	\$370	-
2019 Total	\$2,720	\$5,846	\$8,566
2020 Hours	21.3	38.1	59.4
2020 Rate	\$850	\$410	-
2020 Total	\$18,105	\$15,621	\$33,726
<b>Lodestar</b>	<b>\$20,825</b>	<b>\$21,467</b>	<b>\$42,292</b>

#### **D. Plaintiffs are entitled to recover reasonable expenses**

Plaintiffs are also entitled to recover for reasonable and appropriate "costs of litigation" beyond attorneys' fees. 42 U.S.C. § 6305(d). Plaintiffs and their counsel incurred necessary expenses of \$4,200.66 in this case, for such things as service of process, printing, and travel. A spreadsheet detailing each cost is attached as an exhibit in support of this motion. *See* Colangelo Decl., Ex. 5. "[A]wards of such costs – costs that are ordinarily billed to a client – are routine under . . . fee statutes." *Int'l Woodworkers of Am., AFL-CIO, Local 3-98 v. Donovan*, 792 F.2d 762, 767 (9th Cir. 1985). The Court should award these expenses in full.

#### **CONCLUSION**

Plaintiffs therefore respectfully request that the Court award attorneys' fees and costs in the amount of \$685,851.66 – the sum of \$639,359 for the merits litigation, \$4,200.66 in costs, and \$42,292 for the fee litigation.

1 Dated: May 15, 2020

Respectfully submitted,

2 /s/ Daniel Hessel

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